IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

THURSDAY, THE 29TH NOVEMBER 2007 / 8TH AGRAHAYANA 1929

WP(C).No. 28231 of 2007(J)

PETITIONER:

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1. K.K.KURIAN, S/O KURUVILA KARAKAN,
   KEEZHVAIPUR P.O., MALLAPPALLY WEST,
   PATHANAMTHITTA.

2. SOSAMMA KURIAN, W/O KURIAN,
   KEEZHVAYPUR P.O., MALLAPPALLY WEST,
   PATHANAMTHITTA.

BY ADV. SRI.SIBY MATHEW
SRI.PHILIP J.VETTICKATTU

RESPONDENTS:

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1. THE TAHSILDAR,
   MALLAPALLY TALUK,
   PATHANAMTHITTA.

2. DISTRICT COLLECTOR,
   PATHANAMTHITTA.

3. STATE OF KERALA, REPRESENTED BY ITS
   SECRETARY, SECRETARIAT, TRIVANDRUM.

BY GOVERNMENT PLEADER M.R. SABU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1- TRUE COPY OF ORDER DATED 3.8.1988 ISSUED BY THE DISTRICT COLLECTOR.

EXT.P2- TRUE COPY OF JUDGMENT DTED 31.8.95 IN W.P.(C).1273.89 OF this HON'BLE COURT

EXT.P3- TRUE COPY OF JUDGMENT DATED 12.6.06 IN A.S. 29/01 OF THE DISTRICT COURT, PATHANAMTHITTA

EXT.P4- TRUE COPY OF REPRESENTATION DTED 26.6.06 SUBMITTED BY THE PETITIONERS

EXT.P5- TRUE COPY OF REPRESENTAITON DATED 15.9.06 SUBMITTED BY THE PETITIONERS

EXT.P6- TRUE COPY OF REPRESENTAITON DATED 21.9.06 SUBMITTED BY THE PETITOINERS

EXT.P7- TRUE COPY OF JUDGMENT DATED 7.3.07 IN W.P.(C).7593/07 OF THIS HON'BLE COURT

EXT.P8- TRUE COPY OF ORDER NO.A3-1963/88 DATED 18.9.07 ISSUED BY THE 1ST RESPONDENT

(TRUE COPY)

P.A TO JUDGE

ANTONY DOMINIC, J

W.P.(C).28231/2007

Dated this the 29th day of November, 2007

JUDGMENT

Petitioners are the owner of property in survey No.471/1B3 (Re.Sy.No.239/1 & 240/5) in plot No.5 of Anickad Village. The prayer sought for in this writ petition is to quash Ext.P8 and to direct respondents 1 and 2 to effect mutation of the property in the petitioners' name.

2. It is seen that soon after the petitioners had purchased the property and the second respondent had issued proceedings invalidating the same and that was challenged by the petitioners before this Court in O.P.1273/1989. That writ petition was disposed of by Ext.P2 judgment wherein this Court held that the District Collector had no authority to invalidate the documents in the petitioners' name. Proceeding further, this Court further clarified that the judgment cannot be taken as one pronouncing proprietory right of the petitioners and it is for the petitioners to establish their proprietory rights in

an appropriate civil proceedings.

3. Accordingly, petitioners filed O.S.219/95 on the file of the Sub Court, Thiruvalla, for the declaration of their title in respect of the property. That suit was decided against the petitioners and there upon, they filed A.S.29/2001 before the District Court, Pathanamthitta, and that appeal was disposed of by Ext.P3 judgment decreeing the suit in part and declaring the title and possession of the petitioners who were the appellants over the plaint scheduled property which was also separately indicated in a plan attached.

4. On the strength of the documents and the declaration of their title, when the petitioners applied for mutation of the property into their name that application has been declined by the Tahasildar, first respondent, by Ext.P8 proceedings, on the basis that the land was shown as survey puramboke in the re-survey land register. Relying on the above entry in the re-survey land register, the request of the petitioners for mutation has

been declined. It is in this background, this writ petition has been filed by the petitioner.

5. I heard the learned counsel for the petitioner and also the learned Government Pleader.

6. It may be true that the land is described as survey puramboke in re-survey land register. But the fact remains that a competent civil Court has already declared the petitioners' title over the property in question in Ext.P3 judgment to which the State is also a party. Judgment and decree of the competent civil Court having become final and as this Court had already upheld the validity of the title deed of the petitioners by Ext.P2 judgment, the respondents are bound to honour these authoritative pronouncements. Therefore, I see no substance in the stand taken by the first respondent in Ext.P8 for declining to effect mutation sought for by the petitioners.

7. Therefore, quashing of Ext.P8, I dispose of this

writ petition directing respondents 1 and 2 to effect mutation of the property as applied by the petitioners in their name. Needless to say that the respondents will be at liberty to review any action taken consequent to this judgment, depending upon any modification that may happen to Ext.P3, in any appeal or other proceedings.

ANTONY DOMINIC
Judge

mrcs